



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

EPA-R06-OAR-2013- 0615; FRL-9958-65-Region 6

Approval and Promulgation of Implementation Plans; New Mexico;

**Albuquerque/Bernalillo County; New Source Review (NSR) Preconstruction Permitting
Program**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (the Act or CAA), the Environmental Protection Agency (EPA) is proposing to approve portions of revisions to the applicable New Source Review (NSR) State Implementation Plan (SIP) for the City of Albuquerque-Bernalillo County. Additionally, the EPA is proposing to conditionally approve the provisions establishing accelerated review and technical permit revisions. The EPA is proposing to approve the following: the establishment of a new Minor NSR (MNSR) general construction permitting program; changes to the MNSR Public Participation requirements; and the addition of exemptions from MNSR permitting for inconsequential emission sources and activities.

DATES: Comments must be received on or before **[insert the date 30 days after date of publication in FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R06-OAR-2013-0615, at www.regulations.gov or via e-mail to wilson.aimee@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not

submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Aimee Wilson, (214) 665-7596, wilson.aimee@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Aimee Wilson, (214) 665-7596, wilson.aimee@epa.gov. To inspect the hard copy materials, please schedule an appointment with Aimee Wilson or Mr. Bill Deese at 214-665-7253.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

The Clean Air Act (CAA or the Act) at section 110(a)(2)(C) requires states to develop and submit to the EPA for approval into the SIP, preconstruction review and permitting

programs applicable to certain new and modified stationary sources of air pollutants for attainment/unclassifiable and nonattainment areas that cover both major and minor new sources and modifications, collectively referred to as the NSR SIP. The CAA NSR SIP program is composed of three separate programs: Prevention of Significant Deterioration (PSD), Nonattainment New Source Review (NNSR), and Minor New Source Review (MNSR). The Minor NSR SIP program addresses construction or modification activities that do not emit, or have the potential to emit, beyond certain major source/major modification thresholds and thus do not qualify as “major” and applies regardless of the designation of the area in which a source is located. The EPA regulations governing the criteria that states must satisfy for EPA approval of the NSR programs as part of the SIP are contained in 40 CFR sections 51.160 - 51.166. Minor NSR regulations are contained at 40 CFR sections 51.160 - 51.164.

The SIP submittal under review in this action contains proposed changes to each of the current SIP-approved sections contained in 20.11.41 of the New Mexico Administrative Code (NMAC) and includes the proposed addition of seven new sections. All changes are identified in Table 4 of this rulemaking. These changes are discussed in more detail in the Technical Support Document (TSD) contained in the docket for this action.

II. What did City of Albuquerque-Bernalillo County Submit?

Our proposed action today addresses the revisions to the City of Albuquerque – Bernalillo County’s (the “County”) Minor NSR SIP which were submitted to EPA on July 26, 2013 as well as the letters submitted to the EPA dated April 21, 2016, July 5, 2016, September 19, 2016, and December 20, 2016.

III. EPA’s Evaluation

The current County SIP includes the EPA approved Part 41 provisions (*see*, 69 FR

78312, December 30, 2004), which form the basis of the County's Minor NSR SIP program implemented by the City of Albuquerque Environmental Health Department (the "Department"). The following sections of this proposed action and the accompanying TSD analyze the proposed revisions to the Construction Permits regulation found in Part 41 to determine whether the submitted revisions and the Department's letters dated April 21, 2016; July 5, 2016; September 19, 2016; and December 20, 2016, as a whole, meet the requirements of the CAA and the EPA's regulations, policy, and guidance for NSR permitting. As noted in the TSD, the revisions made to 20.11.41 sections 1, 3, 4, 5, 6, 9, 10, 11, 12, 18, 19, 20, 26, 27, and 29 NMAC are non-substantive, and thus will not be analyzed in detail below. A line by line comparison of these non-substantive submitted changes is found in the TSD in the docket for this action.

a. What are the Requirements for the EPA's Evaluation of a Preconstruction Permitting Program SIP Submittal?

In addition to the preconstruction permitting program requirements of section 110(a)(2), our evaluation must ensure that the submittal complies with section 110(l) of the CAA before it can be approved into the SIP. Section 110(l) states that the EPA shall not approve a revision of the SIP if it would interfere with any applicable requirement concerning attainment of the National Ambient Air Quality Standards (NAAQS), reasonable further progress, or any other applicable requirement of the Act. Thus, under CAA section 110(l), the proposed MNSR SIP revision must not interfere with attainment, reasonable further progress, or any other applicable requirement of the Act. As part of the 110(l) analysis, we have evaluated the proposed MNSR SIP revisions for any potential interference with attainment and reasonable further progress for all NAAQS pollutants. Bernalillo County is designated attainment for all NAAQS pollutants.

b. Technical Review of Albuquerque/Bernalillo County's SIP Revisions Submittals

As detailed in the TSD, the July 26, 2013 SIP submittal meets the completeness criteria established in 40 CFR 51, Appendix V. In addition to the completeness review, the revisions contained in the SIP submittal were evaluated against the applicable requirements contained in the Act and 40 CFR 51.

Section 2 of the County's submittal governs the scope of the Minor NSR program. 40 CFR 51.160(e) requires that the plan identify the "types and sizes of facilities, buildings, structures, or installations which will be subject to review." The County's current SIP requires stationary sources with emissions in excess of the limits listed in this section to obtain a construction permit. In its submittal, the County revised this section to include source or activity based exemptions. The emissions from the new exemptions are expected to be inconsequential, and these sources and activities have historically been commenced and operated without coverage by an air permit.

As required by section 110(l) of the CAA, we analyzed the addition of these exemptions to ensure that they do not interfere with any applicable requirement for attainment of the NAAQS, reasonable further progress (RFP), or any other CAA requirement. The Department has been carrying out the Minor NSR program as revised since January 1, 2014. Since then, there has been no indication that these exempted sources have interfered with attainment, RFP, or any other requirement of the Act. The EPA took into consideration the following factors when making the decision to propose that the exemptions be approved into the SIP;

- Compliance with the 8-hour ozone standard has improved county-wide with ozone pollutant concentrations trending downward since the late 1980's. The 8-Hour and 1-Hour ozone trends are listed in Table 1:¹

¹ Table showing more data points is available in the Technical Support Document for the proposed SIP approval.

Table 1: Ozone Data

Year	Maximum 8-Hr Value	Maximum 1-Hr Value	# exceedances of 8-Hr Std (for all monitors combined)	# exceedances of 1-Hr Std (for all monitors combined)	Number of Monitors in Bernalillo County
2000	0.084	0.1	10	0	7
2005	0.084	0.131	7	1	8
2010	0.078	0.094	1	0	7
2015	0.073	0.081	0	0	5

- Compliance with the 8-hour CO standard has improved county-wide with CO pollutant concentrations trending downward since the late 1980's. The 8-Hour and 1-Hour CO trends are listed in Table 2:

Table 2: CO Monitoring Data

Year	Maximum 8-Hr Value	Maximum 1-Hr Value	# exceedances of 8-Hr Std	# exceedances of 1-Hr Std	Number of Monitors in Bernalillo County
1995	9.1	14	0	0	6
2000	4.3	9.2	0	0	6
2005	4.3	4.6	0	0	6
2010	3.1	3.5	0	0	5
2015	1.4	2.5	0	0	2

- Compliance with the 1-hour NO₂ standard has improved county-wide with NO₂ pollutant concentrations trending downward since the late 1990's. The 1-Hour NO₂ trends are listed in the Table 3:

Table 3: NO₂ Data

Year	Maximum 1-Hr Value	Annual Mean (Maximum Value out of all monitors)	# Exceptional Events	Number of Monitors in Bernalillo County
1990	118	17.7	0	1
1995	124	17.6	0	2
2000	135	17.23	0	2
2005	57	15.74	0	3
2010	81	12.07	0	1
2015	48	11.074	0	1

Section 7 of the County's SIP provides definitions for the terms used throughout 20.11.41 NMAC. The submitted revisions provide updated definitions for several terms. The revisions either made the definitions align more closely with those provided in 40 CFR 51.100 or they were updated to match those that were approved by the EPA in the most recent New Mexico Minor NSR SIP revision at 20.2.72 NMAC. We are proposing to approve the majority of the definitions with the exception of the following: "conflict of interest" listed in 20.11.41.7.J, "technical permit revision," listed in 20.11.41.7.RR, and the reference to technical permit revisions found in 20.11.41.7.EE. We are proposing to conditionally approve these definitions since they only apply to sections 20.11.41.32 and 20.11.41.28.B which we are also proposing to conditionally approve in this action.

Section 13 of the County's SIP contains the requirements for the permit application that must be filed with the Department by any person seeking a permit. The revisions include the addition of provisions related to the changing, supplementing, or correcting a previously submitted permit application and provisions detailing what must be included before an application is considered complete. The revision also establishes a new abbreviated public participation process in 20.11.41.13B that applies to technical permit revisions. This abbreviated process does not meet the requirements for prominent advertisement in the area affected as required by 40 CFR 51.161. Rather, it allows the applicant to send notification letters to neighborhood organization within half a mile of the source seeking the technical permit revision. The County has committed to revising this abbreviated process to include the necessary public

notice requirements as listed in 40 CFR 51.161. We are therefore proposing to conditionally approve 20.11.41.13.B.²

With the exception of the public participation process found in 20.11.41.13B., we are proposing to approve section 13 as it includes more stringent requirements for permit applicants with respect to the contents of permit applications that are not present in the current SIP. We propose to find section 13 meets the applicable federal requirements, including 40 CFR 51.160 which contains federal requirements regarding information an owner or operator of a new or modified source must submit to the State or local agency.

Section 14 of the County's SIP contains the public notice requirements. Federal requirements for public participation for Minor NSR programs can be found at 40 CFR 51.160 and 51.161. The revised regulations allow the Department to publish its notice in a newspaper of general circulation in Bernalillo County, whereas the current SIP requires that it be published in a newspaper of general circulation in the area closest to the location of the source seeking a permit. The revision also shortens the comment period. Previously, commenters had 45 days to submit comments; under the new regulation they have 30 days to comment on the permit application. The requirement to publish the notice in a newspaper of general circulation in Bernalillo County meets the requirement found in 40 CFR 51.161(b)(3) to publish a notice by "prominent advertisement in the area affected." Though the revision to 20.11.41.14 results in a reduction of the length of time the public can comment on the permit application, it still meets federal requirements since the new time period is equivalent to the federal minimum requirement found in 40 CFR 51.161(b)(2).

² Letter dated December 20, 2016 to Ron Curry, Regional Administrator, EPA Region 6, from Mary Lou Leonard, Director Environmental Health Department, City of Albuquerque. Copy of this letter and copies of all others referenced in this proposal are in the docket for this rulemaking.

The revised provisions provide that only those who submit comments during the 30-day comment period will be notified when the Department's analysis is available. As clarified in the County's July 5, 2016 letter, those who wish to provide comments on the analysis will have 30 days to do so once it becomes available. The proposed revisions also require a person to comment in writing on the permit application in order to be allowed to comment on the Department's Analysis. We believe that this is a minimal burden placed on the public to express written interest on the permit application in order to have the opportunity to comment on the Department's Analysis. This additional requirement does not undermine federal public participation requirements, nor does it interfere with any other requirement of the CAA. Therefore, we propose approval of this revision into the SIP.

In addition, the County has revised the language in 20.11.41.14(B)(8) NMAC which requires that public notices be automatically sent to the Region 6 EPA office; the revised provision now provides that public notices be sent to the EPA only if requested by the EPA. 40 CFR 51.161(d) requires that a state send a copy of all public notices to the EPA via the Regional Office, without qualifying whether a request by the EPA is necessary. To ensure that all public notices are received by the EPA pursuant to 40 CFR 51.161(d), Region 6 has formally requested copies of each public notice be provided to the EPA.³ Therefore, the Department will provide a copy of all public notices for construction permits to the EPA meeting the federal requirement in 40 CFR 51.161(d).

³ Copies of public notices were requested via letter from Mr. Jeffrey Robinson, Section Chief, Air Permits, EPA, Region 6 to Ms. Mary Lou Leonard, Director, City of Albuquerque Environmental Health Department on June 6, 2016. City of Albuquerque responded to EPA's request via letter dated July 5, 2016 from Ms. Mary Lou Leonard, Director, City of Albuquerque Environmental Health Department, to Mr. Jeffrey Robinson, EPA, and agreed to provide copies of the notices to EPA.

Section 15 of the County's SIP contains the provisions governing the public information hearing process. The proposed regulation clarifies that the Department shall hold a public information hearing (PIH) for a permit application if the Department determines there is significant interest and a significant air quality issue. Section 15 requires the Department to hold a hearing, if needed, no fewer than 30 days before the deadline for the Department to make a final decision on the permit application and to publish a public notice of the hearing no fewer than 10 days before it occurs. This is a new requirement that is not in the current SIP. The replacement regulation also clarifies that the applicant is to present their permit proposal and answer questions from the attendees. It also requires that the PIH is recorded and the recording be included in the administrative record. There are no federal requirements for Minor NSR permits to have an opportunity for a hearing, therefore, the proposed section 20.11.41.15 is more stringent than federal requirements and we are proposing its approval into the SIP.

Section 16 in the County's SIP governs the permit decisions process. It specifies the numbers of days within which the Department shall either grant, grant subject to conditions, or deny a permit or permit revision after the Department deems a permit application administratively complete. The revision reduces the number of days the Department has to review the application from 180 days to 90 days. It also reduces the days in which the Department must hold a hearing, if one is required, from 90 days to 60 days. The Department provided supplemental information to the EPA regarding the number of Minor NSR permits that have been issued since the reduction in the amount of time the Department has to review an application has been implemented. The Department has been implementing this reduction in time

for the Department's review of Minor NSR permits for over 10 years. The Department has issued approximately 892 new MNSR permits since January 20, 2000.⁴

Bernalillo County is designated attainment for all NAAQS pollutants, and the air quality trends provided in the section 2 analysis support that the air quality is improving in the county. The reduction of time for the Department's review of Minor NSR permit applications has therefore not interfered with attainment, reasonable further progress, or any other applicable requirement of the Act and we are proposing its approval into the SIP.

Section 17 of the County's SIP provides the basis for which a permit may be denied. The revision removes a provision that refers to ambient air standards that are unique to the Air Board. There are no standards that are unique to the Air Board, the County incorporates the federal standards by reference.⁵ We are proposing to approve removal of this provision from the current SIP. The proposed replacement regulation includes a new provision at 20.11.41.17.F. that allows the Department to deny a permit application if the Department determines that a conflict of interest existed or exists regarding an application that was submitted during accelerated review as authorized by 20.11.41.32 NMAC. We are proposing to conditionally approve this provision in 20.11.41.17F. since it applies only to permits processed through the accelerated review process established in 20.11.41.32 NMAC, which we are also proposing for conditional approval. We are proposing to approve the rest of section 17.

Section 20 of the County's SIP provides the basis for which a permit may be cancelled, suspended, or revoked. The proposed replacement regulation includes a new provision that provides that a violation of a requirement of the State Act, a board regulation, or a condition of a

⁴ Historical new Minor NSR permit issuance data was provided via letter dated April 21, 2016, from Isreal Tavarez, City of Albuquerque, to Aimee Wilson, EPA, Region 6.

⁵ See, 20.11.8.11

permit that has been issued pursuant to 20.11.41 NMAC may result in suspension or revocation of the permit. This provision makes the SIP more stringent and we are proposing its approval into the SIP.

Section 21 of the County's submittal addresses the permittee's obligation to notify the Department in various instances. This section adds a new requirement for the permittee to notify the Department of the date a portable source leaves or returns to the County. The permittee must also notify the Department of any permit update or correction no more than 60 days after the permittee knows or should have known about the condition that requires updating or correction of the permit. In addition, the permittee must submit an annual emissions inventory to the Department as required by 20.11.47 NMAC. The revised section also states the timeframes in which the required notifications must be completed in a clearer manner than the current SIP. These revisions assist in ensuring that sources are not engaging in acts that will result in an exceedance of one of the NAAQS and in clarifying when each notification must be provided to the Department. We are proposing to approve this section into the SIP.

The County wishes to remove the current section 22- Emergency Permits from its current SIP. The July 26, 2013 SIP Submittal renumbered section 22 to section 24. The County, in its technical support document, and subsequently in its April 21, 2016 letter to the EPA, declared the provisions to be "local only" provisions, thus indicating an intention that they be removed from the SIP. The removal of the provision will not interfere with any applicable requirements of the CAA as it merely provided an avenue for permittees to obtain a permit at an expedited rate in the event of an emergency. The removal of such a provision will not interfere with any applicable requirement of the Act. Sources operating under emergency permits remain subject to federal enforcement.

The proposed replacement regulation for section 22 clarifies the performance testing requirements in the County. The proposed regulation clarifies the following: the permittee is responsible for the testing expenses, the permittee must submit a written report of the test results within 30 days of the completion of the testing, and the Department may require the permittee to repeat the testing or perform additional testing as frequently as the Department requires to ensure that the source demonstrates compliance with the permit. The revised regulation assists in ensuring that sources are in compliance with, and remain in compliance with, their permits. The revisions incorporate more stringent requirements for performance testing than what is currently in the SIP and we are proposing that these revisions be approved into the SIP.

Section 23 of the County's submittal addresses the temporary relocation of portable stationary sources in the County. The submittal adds clarifying language regarding the requirements applicants must meet in order to relocate a permitted portable source without obtaining a permit revision. It also includes the incorporation of additional recordkeeping and notification requirements that must be met in order for the portable source to relocate without undergoing a permit revision and identifies any sources that are exempt from the requirements listed in this section. Further, it requires that the application for relocation be submitted at least 45 days prior to the relocation date, that relocation applicants pay the fee required by 20.11.2 NMAC, and that applications include an EPA-approved air dispersion model showing the proposed new location will comply with the NAAQS and NMAAQs, include all information required by 20.11.41.13 NMAC and be signed certifying accuracy. The EPA is proposing to approve these revised provisions as they include more stringent requirements for portable source relocation to meet before qualifying for an exemption from preconstruction permitting. Section 23 meets the applicable federal requirements and we are proposing its approval into the SIP.

Section 25 of the County's submittal addresses the requirements for minor source modifications in nonattainment areas. The proposed regulation removed the reference to the State of New Mexico non-methane hydrocarbon standard in 20.11.44 NMAC, Emissions Trading, since the format of the standard is outdated and its withdrawal from the SIP was recommended by the EPA Region 6 office.⁶ We are proposing to approve the removal of this reference. The proposed regulation also contains a requirement that an existing source that is subject to nonattainment permitting and is modifying shall demonstrate a net air quality benefit of at least a 20% reduction in ambient impact for each applicable contaminant. These revisions result in a more stringent SIP than currently approved, therefore we find that they meet federal requirements for SIP-approved permitting plans.

Section 28 of the County's submittal addresses administrative and technical permit revisions. The proposed replacement regulation includes details on what constitutes administrative and technical permit revisions, the requirements of the applicant when submitting an administrative or technical permit revision, and how the Department processes an administrative or technical permit revision. Each permit revision type has specific review and permit issuance procedures, applicable fees, and public notice requirements, as described below:

- Administrative permit revisions require that a form on the revision be submitted by the applicant to the Department. Upon receipt of the form, the Department determines whether the revision qualifies as an administrative revision. Administrative revisions are limited to administrative changes that do not have associated increases in permitted emissions and do not result in a change to a permit term or condition, such as: the correction of typographical errors, change in administrative information (e.g., change in

⁶ Letter dated February 21, 2007 from Jeff Robinson, EPA to Neal Butt, Albuquerque Environmental Health Department.

owner, facility address, or contact phone number), the incorporation of the retirement of a permitted source or the closing of a facility, or the incorporation of NMAC exempted sources.⁷ Under this revision, administrative permit revisions now require a certified written notification of the revision be submitted by the applicant to the Department. Administrative revisions become effective upon receipt of the notification by the Department. The Department is not required to reissue the permit to incorporate an Administrative permit revision. Administrative revisions have applicable permit fees under 20.11.41.12 NMAC. These revisions are not subject to the public notice requirements contained in either section 13 or section 14.

- Technical permit revisions require that an application for a revision be submitted by the applicant to the Department. Technical permit revisions are used to accomplish changes that will not result in a significant emissions increase that cannot be accomplished using the administrative revisions provision in this section. The Department has 30 days after the receipt of a complete application to approve or deny the permit revisions or inform the applicant that the request must be submitted as a permit modification. This timeline for the Department's action on the permit application may be extended if the Department holds a public meeting in response to significant public interest regarding the permit revision. The technical permit revision becomes effective upon written approval from the Department, and the Department is required to file the technical permit revision with the existing permit. Permit actions that qualify as technical revisions are required to follow the public notice requirements of 20.11.41.13 NMAC, and fees under 20.11.41.12. Permit

⁷ The incorporation of the 20.11.41.2 NMAC exempted sources into an existing permit is an administrative action and does not change the exempt status of these sources. These 20.11.41.2 NMAC exempt sources remain exempt from Minor NSR permitting requirements and their incorporation into an existing permit does not result in an increase in permitted emission rates or change a term or condition of the existing permit.

actions that qualify as technical revisions are exempt from the public notice requirements provided for in 20.11.41.14 NMAC.

Federal Minor NSR Program requirements generally require a 30-day public review for all sources that are subject to Minor NSR; however, these requirements also allow a state to identify the types and sizes of facilities, buildings, structures, or installations, which will require full preconstruction review by justifying the basis for the state's determination of the proper scope of its program.⁸ Importantly, our decision to approve a state's scope of its Minor NSR program must consider the individual air quality concerns of each jurisdiction, and therefore will vary from state to state. The EPA recognizes a state's ability to tailor the scope of its Minor NSR program as necessary to achieve and maintain the NAAQS.

The revised SIP rule is more stringent than the current SIP with respect to requiring written notification of the administrative revision be submitted by the applicant to the Department. The administrative permit revisions do not have any associated increases in permitted emissions and are truly inconsequential in nature. As these administrative revisions have no associated increases in emissions, we find that they will not interfere with any provision of the CAA or EPA regulations as required by section 110(l) of the CAA.

The Department began issuing technical permit revisions when the revised 20.11.41 NMAC, Construction Permits, became effective on January 1, 2014. Since 2014, the Department has issued 13 technical permit revisions in the County. The Department's implementation of the permit revision program, which allows for reduced public notice for administrative and technical revisions, has not resulted in a measured exceedance of the NAAQS and has not shown any

⁸ For example, under the federal Tribal NSR regulations, EPA did not require permits for sources with emissions below "*de minimis*" levels, and for sources in "insignificant source categories". 76 FR at 38755. In sum, under these Tribal NSR regulations, some sources are not required to obtain permits, and have no public notice requirements.

interference with reasonable further progress.⁹ Furthermore, a review of the technical permit revisions issued since 2014 shows that the total annual increases in permitted emissions is less than 1 ton per year for all NAAQS pollutants. In fact, most of the pollutants show no change or an overall decrease in annual emissions as a result of the technical permit revisions issued since 2014. This is consistent with our expectation that the permit revisions and associated public notice requirements will not have adverse impacts on air quality that interfere with attainment or reasonable further progress or any other applicable requirement of the Act.

However, since the technical permit provision potentially allows permittees to conduct changes that may potentially result in up to a one pound per hour increase of a NAAQS pollutant or NMAAQs pollutant, the County is required to follow the public notice requirements provided in 40 CFR 51.161, which requires that the County provide “a notice by prominent advertisement in the area affected.” As written, permittees seeking a technical permit revision are required to provide public notice by sending a letter to designated representatives of recognized neighborhood organizations and associations within one-half mile of the source requesting the modification. This does not meet the federal notice requirements specified in 40 CFR 51.161. The one-half mile radius is not sufficient to constitute a “prominent advertisement” in the “area affected.” The increase in emissions allowed under this provision has the potential to affect an area greater than one-half of a mile. Additionally, there is no way to ensure that all of the individuals living in areas that could be potentially affected by this increase are members of, or represented by, the recognized neighborhood organizations or associations which are required to be notified. For these reasons, we are proposing to conditionally approve the technical permit provision established in Section 28 under CAA section 110(k)(4). The County has committed to

⁹ Permit revisions data provided via letter dated April 21, 2016, from Isreal Tavarez, PE, Environmental Health Manager, Environmental Health Department, City of Albuquerque to Aimee Wilson, Air Permitting, EPA, Region 6.

making the required changes to the public participation component of this provision within one year from the date this conditional approval becomes final.

Section 29 of the County's submittal addresses permit modification. The SIP previously defined "Modification or To Modify" in section 20.11.41.7 (H). The submittal adds a new section entitled "Permit Modification" at 20.11.41.29 which explains that all proposed modifications must comply with all requirements of 20.11.41. Permit modifications must follow the same permitting procedures and meet the same permitting requirements as those required for newly issued Minor NSR permits. We find that the proposed revision clarifies the permit modification process and meets the federal requirements for SIP-approved permitting plans.

Section 30 of the County's submittal addresses permit reopening, revision, and reissuance. The revision gives the Department the authority to reopen, revise, or reissue a permit if any mistakes are found, additional requirements of the CAA or State act are found to apply, the reopening is necessary to ensure compliance with federal or state requirements, or the permittee failed to disclose a material fact to the Department. This revision ensures that the Department has the authority to prevent violations of the CAA in the event that any of the aforementioned events occur. Permit reopening, revision, and reissuance under section 20.1.41.30 would be initiated by the County and is not a permitting mechanism that the permittee can initiate. Therefore, we find that these revisions to section 30 will not affect the ability of the section, or Part 41 overall, to meet the federal requirements for SIP-approved permitting plans.

Section 31 of the County's submittal creates a new type of permit, a general construction permit, in the County's Minor NSR Program. A general construction permit developed by the Department must cover numerous similar sources. Sources allowed to register for coverage under a general permit must be homogenous in terms of operations, processes and emissions,

subject to the same or substantially similar requirements, and not subject to case-by-case standards or requirements. As required in 20.11.41.31(B)(3)(a) NMAC, a general construction permit developed by the Department must describe the sources that qualify to register under the general permit. This requirement satisfies the federal requirement 40 CFR 51.160(e) which provides that the SIP must identify the types and sizes of facilities that will be subject to review. Section 31 states that this provision does not apply to major modifications or sources as defined by 20.11.60 NMAC. The Department further clarified in its letter dated April 21, 2016, that permits developed and issued under the general permits programs will not be issued to sources that are defined as major under federal rules and regulations.

The submitted regulation specifically requires that a general permit include monitoring, record keeping and reporting (MRR) requirements appropriate to the source and sufficient to ensure compliance with the general construction permit, ensuring that the provision will be enforceable as required by 40 CFR 51.160(a). The general permit also must contain sufficient terms and conditions to ensure that all sources operating under a general permit will meet all applicable requirements under the Federal Clean Air Act, e.g., NSPS, NESHAPS, and MACT, and all requirements of the SIP. Sources operating under general permits are not allowed to cause or contribute to air contaminant levels in excess of any National or New Mexico Ambient Air Quality Standard. The provision clearly identifies the category of sources that qualify for coverage and provides that a source notifies the Department of its coverage under the program by submitting a complete application to register. The Department shall grant registration to a source only if it submits a complete application and meets the terms and conditions of the general permit. This provision meets all applicable federal requirements and will not interfere with any provision in the CAA or in the EPA regulations.

Section 32 of the County's submittal seeks to establish an accelerated review process. The accelerated review process allows the County to utilize contractors to perform technical review and the drafting of permits provided the applicant and contractor meet certain obligations. The permit applicant has to pay both an accelerated review processing fee and a permit review fee. The County still retains the authority to review the draft permit and ensure that it meets all of the necessary requirements before it is proposed as a draft permit. The permit however does not go through the same public notice procedures as other permits as outlined in 20.11.41.14.B. NMAC and does not meet the minimum requirements of 40 CFR 51.161(b)(1). 40 CFR 51.161 requires that the state or local agency make public the permittee's application and the state or agency's analysis of that application. Section 32 does not require that the application or analysis be posted in a public place. The County has stated that it inadvertently excluded this requirement, and that it is their practice to make the application and analysis available in accordance with 40 CFR 51.161. We are proposing to conditionally approve this section under 110(k)(4). The County has committed to updating this section within one year of this rule becoming final to reflect its practice of making these documents publicly available.¹⁰

IV. Proposed Action

We are proposing to approve the revisions to the City of Albuquerque – Bernalillo County Minor NSR program submitted on July 26, 2013, as supplemented on April 21, 2016; July 5, 2016; September 19, 2016; and December 20, 2016, that update the regulations to be consistent with federal requirements for Minor NSR permitting, remove a provision that refers to ambient air standards that are unique to the Air Board that no longer exist, and the reference to the State of New Mexico non-methane hydrocarbon standard in 20.11.44 NMAC, Emissions

¹⁰ Letter dated December 20, 2016 to Ron Curry, Regional Administrator, EPA Region 6, from Mary Lou Leonard, Director Environmental Health Department, City of Albuquerque.

Trading. The EPA has made the preliminary determination that the revisions are approvable because the submitted rules are adopted and submitted in accordance with the CAA and are consistent with the laws and regulations for Minor NSR permitting.

We are proposing to conditionally approve the provisions submitted on July 26, 2013, as supplemented on April 21, 2016; July 5, 2016; September 19, 2016; and December 20, 2016, that establish the accelerated permitting procedures. Additionally, the EPA is proposing to conditionally approve the definition of “conflict of interest” at 20.11.410.7(J) NMAC, permit denial as it relates to conflict of interest at 20.11.41.17(F) NMAC, and Accelerated Review at 20.11.41.32 NMAC, as adopted on July 10, 2013 and submitted on July 26, 2013. We are also proposing to conditionally approve the technical permit revision procedures established in section 28.

Table 4 summarizes the changes made to the County’s SIP that are contained in the SIP revisions submitted on July 26, 2013, as supplemented on April 21, 2016; July 5, 2016; September 19, 2016; and December 20, 2016. A summary of the EPA’s evaluation of each section and the basis for this action is discussed in Section III of this preamble.

Table 4. Summary of the SIP submittal in this action.

Section	Title	Submittal Dates	Proposed Action
20.11.41 NMAC – Construction Permits			
20.11.41.1 NMAC	Issuing Agency	07/26/2013	Approval
20.11.41.2 NMAC	Scope	07/26/2013	Approval
20.11.41.3 NMAC	Statutory Authority	07/26/2013	Approval
20.11.41.4 NMAC	Duration	07/26/2013	Approval
20.11.41.5 NMAC	Effective Date	07/26/2013	Approval
20.11.41.6 NMAC	Objective	07/26/2013	Approval

20.11.41.7 NMAC	Definitions	07/26/2013	Approved except for the following which we are conditionally approving: 20.11.41.7.J., 20.11.41.RR, and the reference to technical permit revisions in 20.11.41.EE
20.11.41.8 NMAC	Variances	07/26/2013	Approval
20.11.41.9 NMAC	Savings Clause	07/26/2013	Approval
20.11.41.10 NMAC	Severability	07/26/2013	Approval
20.11.41.11 NMAC	Documents	07/26/2013	Approval
20.11.41.12 NMAC	Fees for Permit Application	07/26/2013	Approval
20.11.41.13 NMAC	Application for Permit	07/26/2013	Approval
20.11.41.14 NMAC	Public Participation	07/26/2013	Approval
20.11.41.15 NMAC	Public Information Hearing	07/26/2013	Approval
20.11.41.16 NMAC	Permit Decision and Air Board Hearing on the Merits	07/26/2013	Approval
20.11.41.17 NMAC	Basis for Permit Denial	07/26/2013	Approved except for 20.11.41.17.F
20.11.41.18 NMAC	Applicants' Additional Legal Responsibilities	07/26/2013	Approval
20.11.41.19 NMAC	Permit Conditions	07/26/2013	Approval
20.11.41.20 NMAC	Permit Cancellations, Suspension, or Revocation	07/26/2013	Approval
20.11.41.21 NMAC	Permittee's Obligations to Inform the Department and Deliver an Annual Emissions Inventory	07/26/2013	Approval
20.11.41.22 NMAC	Performance Testing	07/26/2013	Approval
20.11.41.23 NMAC	Temporary Relocation of Portable Stationary Sources	07/26/2013	Approval
20.11.41.24 NMAC	Emergency Permits	07/26/2013	Removed
20.11.41.25 NMAC	Nonattainment Area Requirements	07/26/2013	Approval
20.11.41.26 NMAC	Compliance Certification	07/26/2013	Approval
20.11.41.27 NMAC	Enforcement	07/26/2013	Approval

20.11.41.28 NMAC	Administrative and Technical Permit Revisions	07/26/2013	Approval for Administrative Revisions/Conditional Approval for Technical Permit Revisions
20.11.41.29 NMAC	Permit Modification	07/26/2013	Approval
20.11.41.30 NMAC	Permit Reopening, Revision and Reissuance	07/26/2013	Approval
20.11.41.31 NMAC	General Construction Permits	07/26/2013	Approval
20.11.41.32 NMAC	Accelerated Review of Application	07/26/2013	Conditional Approval

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

A. *Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review

B. *Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA. There is no burden imposed under the PRA because this action does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. There are no requirements or responsibilities added or removed from Indian Tribal Governments. Thus, Executive Order 13175 does not apply to this action. In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-

202 of the Executive Order. This action is not subject to Executive Order 13045 because it approves a state program.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This action proposes to approve state permitting provisions that are consistent with the CAA and disapprove state permitting provisions that are inconsistent with the CAA.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 6, 2017.

Samuel Coleman,

Acting Regional Administrator, Region 6.

[FR Doc. 2017-04734 Filed: 3/9/2017 8:45 am; Publication Date: 3/10/2017]